

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1444 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

MAHA PRABHUJI CO-OP HOUSING SOCIETY

Versus

TOWN PLANNING OFFICER

Appearance:

MR PV NANAVATI for Petitioner
MR DN PATEL for Respondent Nos. 1 & 2
MR MK SHELAT for Respondent No. 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 17/11/2000

ORAL JUDGEMENT

1. In the instant Special Civil Application, how the Corporation is acting in the matters which are before the Court, is an example. Nobody from the respondents'

office took trouble to file a reply. Initially, the Division Bench of this Court issued notice returnable on 28/2/1989 by an order dated 22/2/1989. Thereafter, the matter was adjourned. From the docket, it appears that the matter was adjourned from time to time and on 2/7/1991, the Bench passed an Order as under :

"In spite of service of notice, nobody appears on behalf of the Municipal Corporation.

Rule. Considering the peculiar facts and circumstances of the case, as pointed out by the learned Advocate for the petitioner and also perusing the original files of the Town Planning Scheme, the interim relief in terms of para-15C."

No reply has been filed thereafter. The Corporation appears to have forgotten about the matter pending in this Court. When the matter was taken up for final hearing, request was made to the Court and on 22/9/2000, the Court made an order as under :

"No reply is filed by the respondent. Today, on behalf of the respondent, on personal ground, request is made to adjourn to next week. The matter is adjourned to 29.9.2000. However, if any reply is to be filed, it shall be filed before that date; No further time will be granted for filing reply."

Even thereafter, the matter appeared on the Board and was adjourned. Even today, no reply is filed. Therefore, the averments made in the petition on oath have been perused. On behalf of the respondent-Corporation, Mr. Shelat, learned Advocate, requested the Court to grant time. He requested the Court to adjourn the matter to 2:45 p.m. Looking to the schedule of the Court which is fixed much in advance, it is not possible to accept the request made by the learned Advocate. Last week also, when the matter was called out, none for the respondent remained present and Court thought it fit to give one more opportunity and adjourn the matter to today.

3. Mr. Nanavaty, learned Counsel has made a grievance about the fact that without hearing the affected parties, changes have been made in the scheme. He has pointed out that society purchased the land. Thereafter, there was allotment of plot. For a public purpose i.e. housing accommodation, the land was acquired and the society was put in possession of the

land. On 18th October, 1977, the respondent granted permission to erect the building. As per the plan, building was erected and Building Use permission has been granted on 5/11/1980 which is placed on the record vide Annexure-F. The petitioner has pointed out in the petition, in para-10, that the action is against the provisions of the Act; that the concerned officer without giving an opportunity of being heard varied the scheme. Respondent was required to hear the parties in the same manner when hearing is to be given to the parties at the stage of draft scheme.

It is stated about 66 metres of land belonging to the petitioner is allotted to E.S.I. possessing F.P. No. 152/3 which would adversely affect the plot holders/tenements no. 40 and 41 where they have constructed residential houses, after approval of the building plan by respondents and are occupying after building use permission was granted by the respondents. The persons have put their hard earning and they are residing there since 1980 with their family. If reconstitution is permitted, that would render them homeless. It was pointed out that the respondent had no right, competence or authority while amending the scheme to dismember a person from cooperative society. All these aspects which are relevant were required to be considered. As there is no Affidavit in reply, it would not be possible for this Court to say anything except to direct the respondents to hear the petitioner and other affected persons and to pass an order in accordance with law and till then, status quo to be maintained. On the request of the respondent, it is directed that respondent no.3 shall render a decision within a period of 4 months from the service of the notice which may be issued by the respondent. The Special Civil Application is allowed accordingly. Rule is made absolute to the aforesaid extent. No order as to costs.

(B.C. Patel, J.)

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